



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Leading Edge Aerospace Consulting

File: B-229938

Date: January 29, 1988

DIGEST

1. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals are untimely if not filed prior to closing.
2. A procurement need not be set aside for small business concerns where the contracting officer, relying on information regarding a previous similar contract, determines that there is no reasonable expectation that offers from at least two responsible small business concerns would be received.
3. The General Accounting Office does not consider the correctness or accuracy of Department of Labor wage determinations issued in connection with solicitations subject to the Service Contract Act.
4. The determination of price reasonableness is a matter of administrative discretion involving the exercise of business judgment by the contracting officer.

DECISION

Leading Edge Aerospace Consulting protests the award of a firm-fixed-price contract, No. F44650-87-C0031, awarded in response to request for proposals No. F44650-87-R0017 issued by the Department of the Air Force, Langley Air Force Base, Virginia, to obtain civilian instructors. Leading Edge contends that the agency failed to exercise sound judgment in its acquisition planning and management, and that the agency failed to follow the Federal Acquisition Regulation by not setting aside this contract for small businesses.

We dismiss the protest.

The contract which Leading Edge is protesting is approximately the fourth in a series of contracts to be awarded by the Air Force. Leading Edge, a small business organization, asked that the procurement be set aside for small business.

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The protester asserts that the agency never considered contract F44650-87-C0031 specifically for a small business set-aside. The protester states, however, that the first contract of the series was considered for a set-aside but that the agency determined that a set-aside was inappropriate based on the fact that there were not enough small business concerns that responded to the solicitation. Leading Edge argues that the agency erred in failing to consider each contract in the series independently. We disagree.

As a general rule, the decision whether to set aside a procurement is within the discretion of the contracting officer. International Technology Corp., B-222792, June 11, 1986, 86-1 CPD ¶ 544. Leading Edge, however, argues that a set aside is required in this instance under Federal Acquisition Regulation (FAR) § 19.502-2, which states that a contracting officer must set aside a procurement if he determines that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and award will be made at a reasonable price. Here, the record indicates that the contracting officer, relying on the previous information regarding the earlier contract in the series, determined that there was no reasonable expectation that offers from at least two responsible small businesses would be received and that award would be made at a reasonable price. Our decisions hold that a procurement need not be set aside for small business concerns where the contracting officer properly determines, based on the prior history of similar procurements, that there is no reasonable expectation of offers from at least two responsible small businesses. See TLC Systems, B-225871, Mar. 17, 1987, 87-1 CPD ¶ 297. Accordingly, we find no basis to conclude that the contracting officer's judgment not to set aside was an abuse of discretion.

Leading Edge's other bases for its protest involve the solicitation itself, especially with respect to alleged defects in estimated workload and funding levels. It states a number of ways in which the solicitation was allegedly defective. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to closing. 4 C.F.R. § 21.2(a)(1) (1987). Here, the protest was filed long after the date of award and therefore these allegations are untimely and will not be considered.

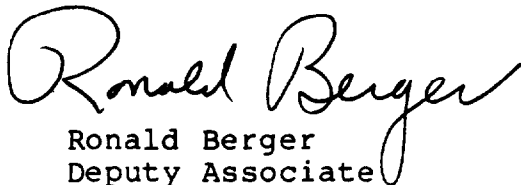
Leading Edge also alleges that the wage determination provided by the Department of Labor was unrealistically low and erroneous. We will not consider this matter on its

merits. We do not to review the correctness or accuracy of Department of Labor wage determinations issued in connection with solicitations subject to the Service Contract Act. Gerald Moving & Warehousing Co., B-225618, Jan. 14, 1987, 87-1 CPD ¶ 59. Therefore, a challenge to a Service Contract Act wage determination should be processed through the administrative procedures established by the Department of Labor, rather than through a bid protest in our Office. Id.

Leading Edge also contends that the evaluation of proposals was defective because the Air Force found its offered price to be more than it could afford, regardless of how good its technical proposal might be. Leading Edge believes that its price was reasonable because it was entitled to a high profit margin because of the risk involved in the firm-fixed-price contract. Leading Edge further contends that the awardee's price was unrealistically low, reflecting "predatory pricing" practices. Leading Edge believes that this is all due to the Air Force's failure to properly plan, manage and fund this procurement.

Whether a proposal price is reasonable is a matter of administrative discretion involving the exercise of business judgment by the contracting officer. Daylight Plastics, Inc., B-225057, Mar. 10, 1987, 87-1 CPD ¶ 269. Moreover, an agency cannot be compelled to award a contract that goes beyond the agency's ability to fund. Therefore, the fact that the protester believes the Air Force should have provided more funding for this procurement to allow for consideration of the protester's proposal does not establish that the Air Force acted improperly. Further, the awardee's willingness to offer a lower price with little or no profit (if that is indeed the case) is not illegal, since even a below cost offer is acceptable, so long as the offeror is responsible. See Salz Lock and Safe, B-227547, July 6, 1987, 87-2 CPD ¶ 18. In short, we find no merit to the protester's arguments that the Air Force did not conduct this procurement properly.

The protest is dismissed.



Ronald Berger
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General Counsel